



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Consider the Adoption of
a General Order and Procedures to Implement the Digital
Infrastructure and Video Competition Act of 2006.

Rulemaking 06-10-005
(Filed February 12, 2007)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON
THE PROPOSED DRAFT DECISION**

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February 12, 2007

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I. Introduction

The Greenlining offers these reply comments, in response to the opening comments on the proposed decision of Commissioner Chong. Greenlining would like to note that these comments are best within the context of our opening comments on the proposed decision, filed on Monday, February 5, 2007. Our opening comments provides explicit sample language exhibiting how these provisions can be met within the confines of the preferred “ministerial” role in regards to video regulation. The language used addresses the objectives of the legislation as they are to be carried out by the Commission in establishing policies and rules for the granting of video franchises. While we recognize the need to maintain a role that is statutorily justified, we also believe that the responsibilities prescribed to the Commission, along with the general and broad nature of those prescribed duties in the legislation actually creates a *discretionary* role within the implementation of a franchising process. This belief is an affirmation of the opening comments on the proposed decision of TURN and the Consumer Federation of California. Further interpretations are expressed in the following comments.

II. Greenlining affirms interpretations that the PUC has a discretionary role in video franchising

Greenlining affirms the positions noted by the Consumer Federation of California and TURN in their opening comments on the proposed decision, that this Proposed Decision unjustifiably constricts the role of the Commission to a narrow, “ministerial” role. By virtue of the Commission as a recognized statewide authority and regulatory body, the role prescribed to it would have to be discretionary within video franchising and licensing.

Were the role to be “ministerial” the legislation would lay out the minute details and nuances of a structure for franchising and simply provide the Commission with the application forms and rubber stamp to address the execution of applications. This is not the case as the legislation actually lays out a structure for a franchising process. A structure based on general principals and stipulations derived from the objectives of increasing competition, increasing job opportunities and increasing rapid access to new and advanced technologies for all Californians.

In order for these objectives to be met in the implementation of a franchising process, the legislation deems the California Public Utilities Commission the sole authority in granting franchises for video and cable operation in the state. This is not a ministerial function in regards to the act of granting franchises but is actually a discretionary responsibility that relates to the function of the process for providers to apply for franchises and have them reviewed comprehensively as well as the act of carrying out the legislation’s objectives through the rules and policies within the process.

III. Greenlining affirms that any restriction of DRA's role is statutorily unjustified

In order for the Commission to effectively implement the provision of DIVCA and ensure that the technologies associated with quality video and broadband service are made available to all Californians at fair and reasonable rates, DRA must be able to fulfill its statutory mandate with full access to pertinent data. This PD does not address this role properly and, in fact, unjustifiably restricts the ability of DRA to collect information necessary for them to “advocate on behalf of video customers¹.”

DIVCA addresses the role of DRA in the statewide video franchising process in Public Utilities Code § 5900(k) where it states:

The Division of Ratepayers Advocates *shall* have authority to advocate on behalf of video customers regarding renewal of a state-issued franchise and enforcement of Sections 5890, 5900, and 5950. For this purpose, the division *shall have access to any information* in the possession of the commission subject to all restrictions on disclosure of that information that are applicable to the commission.

This PD does not follow the legislative mandate of DIVCA regarding DRA's role or its responsibilities as an advocate for consumers. In requiring DRA to follow a line of requirements in order to access information, allowing for video franchise applicants to disallow for DRA to access information, and disallowing DRA to bring formal complaints before the Commission² the Proposed Decision falls out of line with its own prescribed “ministerial” role for the Commission and also prevents effective decision making that addresses the needs of consumers.

¹ Cal. Public Utilities Code § 5900(k)

² Please see Sec. II of “Opening Comments of DRA on The Proposed Decision of Commissioner Chong” dated February 5, 2007

Greenlining finds this extremely problematic as low-income and minority consumers in particular will suffer most from franchises being awarded frivolously to providers without any scrutiny, a critical component of effective policy decisions being formulated. Without DRA having access to pertinent information and an ability to convey their analysis of that information to the PUC, potentially through a formal complaint, this Commission will not have access to information necessary to meet legislative requirements it must fulfill regarding anti-discriminatory practices and build-out requirements.

IV. Greenlining supports the full use of PUC discretion in fulfilling objectives of AB 2987 through the franchising process

DIVCA explicitly lays out the following points as objectives for its reformation of the video franchising process:

- a. Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.
- b. Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status.
- c. Protect local government revenues and their control of public rights of way.
- d. Require market participants to comply with all applicable consumer protection laws.
- e. Complement efforts to increase investment in broadband infrastructure and close the digital divide.

f. Continue access to and maintenance of the public, education, and government (PEG) channels.

g. Maintain all existing authority of the California Public Utilities Commission as established in state and federal statutes.³

Without PUC discretion, these above objectives will not be fulfilled. This Commission must ensure that widespread access is achieved in a nondiscriminatory manner (as the PD attempts to do through required reporting), require providers to comply with consumer protection laws (a responsibility which the PD passes on solely to local governments to address), work to close the digital divide through investments in broadband technology and increased access, and maintain the *existing authority* of the Commission.

As stated, the PD attempts to address the need to fulfill these objectives partially in its requirement of reporting on build-out that will then be matched up with the socio-economic status as established by census tract reporting for particular geographic locales. This will be a small step in ensuring that no provider participates in discriminatory deployment and build out but will not be wholly sufficient in bridging the digital divide that still holds underserved communities from fully taking part in the rapid utilization of communication and information technologies many others take for granted.

Greenlining called for quarterly workshops on build out and deployment and annual hearings on how effective providers have been in responding to underserved communities. This is a further step in both protecting consumers from underserved communities and in promoting the objectives of DIVCA to expand access, bridge the digital divide, create a competitive yet fair

³ Cal. Public Utilities Code § 5100(a)

marketplace where no company is advantaged or disadvantage in relation to others, and finally to maintain the existing authority of the Commission.

Reporting

Additionally, within the scope of a discretionary role as advocated by both TURN and the Consumer Federation of California, Greenlining finds it necessary for the workplace diversity reporting mechanism to be modified. EEO-1 reports potentially show diversity in numbers but *not* in quality. The reports are not accurate reflections of where a company's diversity exists, whether or not this diversity has a major impact on critical policy decisions that affect consumers from all different constituencies, and whether an orientation towards diversity has permeated a provider's philanthropy and community investment.

Philanthropy and community investment are both key indicators of a commitment to diversity as well as the bridging of the digital divide. Without a commitment to ensuring that underserved communities have at their disposal the **resources** to maintain both an intellectual and technical infrastructure for advanced technologies, information systems, and communication systems, the digital divide will persist and grow. In order to meet the legislative objective of ensuring widespread access and bridging the digital divide providers must make their commitment to the above fully known through transparency of philanthropy, workplace and management diversity, along with build-out and deployment. This is all wholly within the statutory mandate of this Commission in its implementation of a franchising process and should be exercised in a discretionary role as the legislation also "maintain all existing authority." Reporting on these issues of corporate social responsibility is currently employed by the

Commission through orders such as the GO-156 Supplier Diversity Program. This model should be similarly employed in reporting for video franchising as well.

Content

In addition to the above stated objectives, DIVCA also addresses the diversity of content and programming that is transmitted through video service. The legislation states that “competition for video service should increase opportunities for programming that appeals to California’s diverse population and many cultural communities⁴.”

Greenlining, in its opening comments on the proposed decision addressed the need for reporting that allows for providers to show how they have actively sought out diverse sources of programming and video content. An example of TBS and how they have sought to change their overall corporate culture to be oriented towards diversity at all levels was provided in our opening comments. It is important that providers maintain a commitment to content and programming diversity that is reflective of the multifaceted diversity of the State of California.

The legislation addresses this as a primary and desired outcome of the overall objective of increased competition which is the inarguable primary objective of this legislation, from its conception. The Commission, within its discretionary role as the sole franchising authority, must ensure that any provider seeking a franchise is working to achieve this before that franchise is granted.

⁴ Cal. Public Utilities Code § 5810(a)

Intervenor Compensation and Protests

Finally, the need for intervenor compensation and public protests (both of which the proposed decision disallows) can not be over emphasized. The Commission is charged with carrying out many discretionary functions and ensuring the widespread access to new and advanced technologies, protecting consumers, and enforcing anti-discriminatory rules. Furthermore, they are charged with implementing a process that maintains the current authority of the Commission. In disallowing the intervenor compensation system and public protests, this proposed decision circumvents the authority of the Commission as it currently exists. The intervenor compensation and public protests have been the tools by which the Commission authorizes and encourages greater public participation in its policy making and regulation.

It is through intervenor compensation and the right to protest that issues such as access, discrimination, and consumer protection are brought to the forefront of policy deliberations and potentially to the awareness of the Commission. In order to properly enforce the rules and mandates of the legislation, intervenor compensation and the right to public protests must be maintained in proceedings related to video franchises. Within a discretionary role, which the PUC has been granted by the legislation, it is imperative that all information pertinent to determining a provider's qualifications for a statewide franchise be made available. Without the intervenor compensation program and the ability for individuals or groups to protest within a given time period, the process for awarding franchises will be flawed and lack the substantial information necessary to guarantee that it falls in line with the objectives of the legislation.

Dated: February 12, 2007

Respectfully submitted,

//s//

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The Greenlining Institute

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of:

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on all known parties to the above-captioned proceedings by mailing a properly addressed copy by first-class mail with postage prepaid, transmitting a facsimile copy, and/or transmitting an electronic copy to each party named in the official service list as maintained on the California Public Utilities Commission's web page.

Executed on February 12, 2007 at Berkeley, California.

//s//

Mark Rutledge

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